

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|-------------------------------|---|--------------|
| SEAN KATZ, minor, | : | CIVIL ACTION |
| by and through his parent | : | |
| KEVIN KATZ and KEVIN KATZ, | : | |
| in his own right, | : | |
| | : | |
| Plaintiffs, | : | |
| v. | : | |
| | : | |
| | : | |
| UNITED STATES POSTAL SERVICE | : | |
| and UNITED STATES OF AMERICA, | : | |
| | : | |
| Defendants. | : | No. 02-3739 |

ORDER

AND NOW, this day of November, 2002, upon consideration of the United States' Motion for the Court Summarily to Compel Discovery, and no response thereto being required under Local Rule 26.1(g), it is hereby **ORDERED** that the motion is **GRANTED**.

Within five (5) days of the date of this Court's order, plaintiffs are directed to serve full and complete verified answers to the United States' interrogatories and to produce documents responsive to the United States' document requests.

BY THE COURT:

UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
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| UNITED STATES POSTAL SERVICE | : | |
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| | : | |
| Defendants. | : | No. 02-3739 |

**THE UNITED STATES' MOTION FOR
THE COURT SUMMARILY TO COMPEL DISCOVERY**

Pursuant to Local Rule 26.1(g), the United States of America,¹ the only proper defendant under Section 2679 of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. (the "FTCA"), by and through its undersigned attorneys, moves the Court for an order summarily compelling plaintiffs' answers to interrogatories and compliance with the United States' request for production of documents.

Under Local Rule 26.1(g), a court has authority to "summarily grant" a motion to compel "without waiting for a response" where, as here, there has been no response or objection

¹ Under the FTCA, the exclusive remedy for the alleged negligence of a federal employee acting in the scope of employment is a tort claim against the United States. Thus, the other named defendant, the United States Postal Service, is not a proper party to this action.

to the discovery requested. Under Local Rule 26.1(g), such a motion need not contain a memorandum of law or attach copies of the interrogatories or document requests.

In the instant action, on September 19, 2002, the United States served interrogatories, requests for production and notices of plaintiffs' depositions. Plaintiffs to date have never served a single response or objection despite the United States' repeated requests that plaintiffs serve the long overdue discovery. Plaintiffs have ignored and disregarded their own discovery obligations even though they long ago timely received the United States' discovery responses.

Plaintiffs are greatly impairing the United States' ability to defend their negligence claims. Plaintiffs allegedly were not available for their depositions on the date originally scheduled, October 30, 2002. At plaintiffs' request, the United States agreed to postpone the depositions until November 14 and 15, 2002, but the United States did so after obtaining plaintiffs' agreement promptly to serve discovery.

The United States needs plaintiffs' responses to discovery to prepare for the depositions. The United States is being unduly prejudiced by plaintiffs' repeated refusals to satisfy their discovery obligations. This is particularly so in

that this action is scheduled for arbitration one month from now,
on December 12, 2002.

WHEREFORE, the United States requests that the Court
grant its motion and enter an order in the form attached,
summarily granting its motion to compel discovery.

PATRICK L. MEEHAN
United States Attorney

JAMES G. SHEEHAN
Assistant United States Attorney
Chief, Civil Division

Annetta Foster Givhan
Assistant United States Attorney
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(215) 861-8319

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned attorney for the United States certifies that she has this date caused a true and correct copy of the foregoing Motion to Compel to be served upon the following by first-class mail, postage prepaid, addressed as follows:

Patrick G. Geckle, Esquire
Mychak Geckle & Welker, P.C.
230 South Broad Street - 11th Floor
Philadelphia, PA 19102-4190

DATED: November 6, 2002

ANNETTA FOSTER GIVHAN
Assistant United State Attorney

CERTIFICATION UNDER LOCAL RULE 26.1(f)

The undersigned attorney for the United States certifies pursuant to local Rule 26.1(f) that she has made reasonable efforts (although not successful) to resolve any dispute, including communicating with plaintiffs' attorney more than once in attempts to address the discovery problems posed by plaintiffs' total failure to satisfy their discovery obligations.

Annetta Foster Givhan
Assistant United States Attorney

DATED: November 6, 2002